

Appl No.: 10/617,978  
Filed: July 11, 2003  
Amdt. Dated July 20, 2005

### REMARKS

This Preliminary Amendment is submitted in view of the Restriction Requirement mailed May 26, 2005, Applicants' Response to Restriction Requirement filed June 24, 2005, and Applicants' Supplemental Response to Restriction Requirement filed concurrently herewith. Applicants have elected the Group I invention, i.e., claims 1-7 and 11-31.

Claims 8-10 and 32-37 have been canceled without prejudice to or disclaimer of the subject matter encompassed thereby as being drawn to a non-elected invention. Independent claims 1, 13, and 23 of the elected invention have been amended to recite the nucleotide sequences elected with traverse in the Supplemental Response to Restriction Requirement filed concurrently herewith, and to remove reference to the non-elected nucleotide sequences of the invention. Applicants expressly reserve the right to file divisional applications or to take other such appropriate measures deemed necessary to seek protection of the inventions encompassed by the canceled claims and the non-elected nucleotide sequences. These amendments to the claims were necessitated by the Restriction Requirement.

Specifically, independent claims 1, 13, and 23 now recite the optimized coding sequence set forth in nucleotides (nt) 73-249 of SEQ ID NO:17 and the optimized coding sequence set forth in nt 64-240 of SEQ ID NO:14. Both of these sequences encode the Aam1 polypeptide set forth in SEQ ID NO:20, and are thus representative members of the nucleotide sequences recited in section (b) of the Markush group of each of these independent claims. Support for recitation of these sequences resides in the original claims, wherein nucleotide sequences encoding the Aam1 polypeptide of SEQ ID NO:20 were recited, and in the Sequence Listing for each of these sequence identifiers, wherein the optimized coding sequences for the Aam1 polypeptide of SEQ ID NO:20 are identified. Further support resides in the specification, for example, at pages 10 and 11.

The Markush group recited in the independent claims now also recites a nucleotide sequence having at least 80% sequence identity to the coding sequence set forth in nucleotides (nt) 73-249 of SEQ ID NO:17 or the coding sequence set forth in nt 64-240 of SEQ ID NO:14. In view of the recitation of this additional Markush group member, the last member of the Markush group of claims 1, 13, and 23 has been amended to recite a complement of these coding sequences. Support for recitation of a sequence having at least 80% sequence identity to the optimized coding sequences for the Aam1 polypeptide resides in the specification, for example, at page 16, line 29, continuing through page 17, line 6. Further, in view of the amendments to the independent claims, claim 28 has been amended to clarify that the nucleotide sequence "encodes a polypeptide set forth in SEQ ID NO:20."

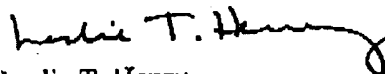
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New dependent claims 38-43 have been presented. Claims 38, 40, and 42 are directed to the nucleic acid molecule of claim 1, the transformed plant of claim 13, and the method for altering plant pest resistance of claim 23, respectively, wherein the nucleotide sequence further encodes a signal peptide. Claims 39, 41, and 43 are directed to specific embodiments of claims 38, 40, and 42, respectively, wherein the nucleotide sequence encodes the polypeptide set forth in SEQ ID NO:20, and the nucleotide sequence comprises SEQ ID NO:17 or SEQ ID NO:14. Support for these claims resides in the specification, for example, at page 10, lines 19-30, and in the Sequence Listing. No new matter is added by way of claim amendment or presentation of new claims. Accordingly, the Examiner is respectfully requested to enter these claim amendments prior to the substantive examination of this application on its merits. In so doing, claims 1-7, 11-31, and 38-43 will be pending in the application.

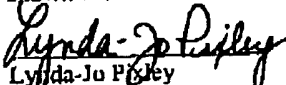
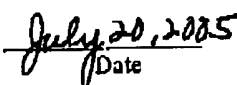
Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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